**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

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| GOT DISTRIBUTION SPV II, LLC,<br><br>Plaintiff,<br><br>v.<br><br>DOUBLERADIUS, INC., EMPLOYEE STOCK OWNERSHIP TRUST, MIGUEL PAREDES, in his capacity as trustee of the DOUBLERADIUS, INC. EMPLOYEE STOCK OWNERSHIP TRUST, and RICHARD WARMATH,<br><br>Defendants. | ) | C.A. No. 2025-0456-SKR |

Submitted: October 16, 2025
Decided: January 28, 2026

*Upon Consideration of Defendant DoubleRadius, Inc. Employee Stock Ownership Trust's Motion to Dismiss*:
**DENIED**

**MEMORANDUM OPINION AND ORDER**

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**Rennie, J.**

## I. INTRODUCTION

This case involves alleged fraud in connection with the sale of a company. Plaintiff GOT Distribution SPV II, LLC ("GOT") is a limited liability company created to purchase DoubleRadius, Inc. ("DoubleRadius"), a corporation whose equity was held entirely by the DoubleRadius, Inc. Employee Stock Ownership Trust (the "Trust"). The Trust sold the entirety of DoubleRadius' equity to GOT, via a contract that GOT alleges was negotiated by DoubleRadius' then-CEO, Richard Warmath. Shortly after the sale, GOT allegedly discovered that Defendants fraudulently misrepresented the state of DoubleRadius' finances, contracts, and supplier relations. GOT also alleges violations of the North Carolina Securities Act and breach of contract.

The Trust seeks dismissal from this action. It argues that is not a proper party to this suit and, even if it is, that GOT has failed to plead that the Trust knew about the alleged fraud. As explained below, the Court finds that ERISA authorizes suits against the Trust, and GOT has sufficiently pled a theory of fraud. Accordingly, the Trust's motion is **DENIED**.

## II. BACKGROUND[1]

### A. The Parties

Plaintiff GOT Distribution SPV II, LLC is a Delaware limited liability company with its principal place of business in Florida.[2]

Defendant DoubleRadius, Inc. Employee Stock Ownership Trust is an employee stock ownership plan ("ESOP") trust administered in North Carolina.[3] It owned the entirety of the issued and outstanding shares of DoubleRadius, Inc. ("DoubleRadius") at the time of the events at issue.[4]

Defendant Miguel Paredes ("Paredes") is the trustee of the Trust and is only "named in his capacity as trustee."[5]

Defendant Richard Warmath ("Warmath") is a resident of North Carolina.[6] Warmath served as Chief Executive Officer of DoubleRadius during the events giving rise to this lawsuit.[7] He is also alleged to have "held the largest number of

[1] The facts are drawn from the allegations in the complaint and the documents incorporated therein. These allegations are presumed to be true solely for the purposes of this motion. *See* D.I. No. 1 (Compl."); D.I. No. 25 ("Mot."); D.I. 30 ("Opp'n"); D.I. 34 ("Reply").
[2] Compl. at ¶ 2.
[3] *Id.* at ¶ 3.
[4] *Id.* at ¶ 3.
[5] *Id.* at ¶ 4.
[6] *Id.* at ¶ 5. Warmath disputes this averment and instead contends that he is a resident of South Carolina. D.I. 26 at ¶ 5. Warmath's residency is not at issue in the Motion, and the Court is bound to treat all well-pleaded allegations as true.
[7] Compl. at ¶ 5.

equity shares of [the Trust], . . . and served as the primary negotiator and decisionmaker on behalf of [DoubleRadius] and [the Trust] for the [purchase]."[8]

**B. Procedural History**

On April 28, 2025, GOT initiated this action seeking recovery for fraud, violations of the North Carolina Securities Act, and breach of contract.[9] On July 2, 2025, Paredes and Warmath each answered GOT's complaint.[10] On that same day, the Trust, through its trustee, Paredes, filed a motion to dismiss (the "Motion"). The parties briefed the Motion, [11] and the Court heard oral argument on October 16, 2025.

**C. Nature of the Case**

DoubleRadius touts itself as a provider of "wireless communications and networking equipment and solutions, as well as design, development, integration, and management services[.]"[12] It was founded in 2001 and, prior to 2017, "was owned entirely by . . . Warmath and his wife . . . and Jason Radford."[13] In or about December 2017, "ownership was vested in eligible employees through an Employee Stock Ownership Plan, administered by [the Trust]."[14] "In 2021, Glenford Carty ("Carty") of GOT Management LLC, was introduced to Defendant Warmath."[15]

[8] *Id.* at ¶ 5.
[9] *Id.* at ¶¶ 78–102.
[10] D.I.s 24 (Paredes's Answer), 26 (Warmath's Answer).
[11] D.Is. 25, 30, and 34.
[12] Compl. at ¶ 10.
[13] *Id.* at ¶ 10.
[14] *Id.* at ¶ 11.
[15] *Id.* at ¶ 12.

Thereafter, Carty and Warmath began negotiating the sale of DoubleRadius to Carty's company.[16] "For various business reasons, [GOT] was formed as a holding company to acquire 100% of [DoubleRadius'] shares from [the Trust]."[17] During negotiations, the Trust, through Warmath, provided Carty with information about DoubleRadius' "finances, assets, inventory, liabilities, and business operations[.]"[18] On June 12, 2023, GOT and the Trust signed an Equity Purchase Agreement (the "Purchase Agreement"), and GOT acquired all capital interests in DoubleRadius.[19]

GOT now alleges that the Trust fraudulently misrepresented DoubleRadius' "Material Customers, Material Supplier[s], Material Contracts, the Bad Inventory, Financial Statements, and operating practices."[20] GOT further alleges that the Trust violated the North Carolina Securities Act,[21] and that the Trust breached the Purchase Agreement.[22] The Trust moves to dismiss on two grounds. First, the Trust argues that it is not a property party to this case because it is not a legal entity.[23] Second, the Trust argues that GOT has failed to "plead sufficient facts to show that

[16] *Id.* at ¶ 13.
[17] *Id.* at ¶ 14.
[18] *Id.* at ¶ 14.
[19] *Id.* at ¶¶ 15–16.
[20] *Id.* at ¶ 79.
[21] *Id.* at ¶ 87.
[22] *Id.* at ¶ 92.
[23] Mot. at 6.

the Trust knew about the fraudulent nature of Warmath's representations[.]"[24] Each of these arguments will be addressed in turn.

## III. STANDARD OF REVIEW

On a motion to dismiss for failure to state a claim upon which relief can be granted under Court of Chancery Rule 12(b)(6),[25] all well-pleaded allegations in the complaint must be accepted as true.[26] Even vague allegations are considered well-pleaded if they give the opposing party notice of a claim.[27] Where a claim arises in fraud, however, Court of Chancery Rule 9(b) requires that "a party must state with particularity the circumstances constituting fraud or mistake."[28]

## IV. ANALYSIS

### A. The Trust is a Legal Entity Subject to Suit

The Trust asks the Court to rule that it is "not a legal entity that can be sued and is not a proper party to this case[.]"[29] The Trust's argument is based entirely on the premise that "[b]ecause [the Trust] has no separate legal status, it cannot be

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[24] *Id.* at 7.
[25] Challenges to the capacity of a party to sue or be sued may proceed under Court of Chancery Rule 12(b)(6) when the alleged defected exists on the face of the pleadings. *See Estate of Jayson by Jayson v. U.S. Bank Nat'l Ass'n,* 2025 WL 2955016, at *4–5 (Del. Super. Oct. 20, 2025) (explaining that a party may bring a challenge relating to lack of capacity "through any procedural vehicle normally available at the pleading stage.").
[26] Ct. Ch. R. 12(b)(6); *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Hldgs. LLC*, 27 A.3d 531, 536 (Del. 2011).
[27] *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006) (quoting *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896–97 (Del. 2002)).
[28] Ct. Ch. R. 9(b).
[29] Mot. at 1.

sued."[30] GOT, while not disagreeing with this principal in the abstract, asserts that the Trust in this case is an exception under three theories: (1) "The Trust is an ESOP trust established pursuant to ERISA" which provides that it may "sue or be sued" [31]; (2) "The Trust is an ESOP trust . . . . [c]onsequently, under Delaware law, it is both a 'statutory trust' and a 'foreign statutory trust'"[32]; and (3) the Trust's prior actions in entering the Purchase Agreement show that it has the capacity to sue and be sued.[33] Aligning with the federal courts that have examined this issue, the Court finds that ERISA allows ESOP trusts to sue or be sued for state law contract and tort claims. Therefore, this portion of the Motion is denied.

The parties agree that the Trust is "an employee stock ownership trust[.]"[34] Hence, the Trust falls under the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA").[35] Section 1132(d)(1) of ERISA, as codified, allows employee benefit plans to "sue or be sued under this subchapter as an entity."[36] "There is no doubt that [Section 1132(d)(1)] authorizes suits against a fund."[37] Yet,

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[30] *Id.* at 7. The Trust does not raise any jurisdictional arguments.
[31] Opp'n at 9.
[32] *Id.* at 12.
[33] *Id.* at 15.
[34] Mot. at 3. *See also* Compl. at ¶ 3; Opp'n at 9.
[35] Employee Retirement Income Security Act of 1974 § 502(d)(1), 29 U.S.C. § 1132(d)(1). The parties agree that ERISA governs the Trust. *See* Mot. at 2 ("The Trust . . . is an employee stock ownership trust[.]").
[36] 29 U.S.C. § 1132(d)(1).
[37] *Pressroom Unions-Printers League Income Sec. Fund v. Cont'l Assurance Co.*, 700 F.2d 889, 892 (2d Cir. 1983).

the Trust asks the Court to read Section 1132(d)(1) narrowly, as only bestowing entity status for the categories of suits specifically listed in that Section, such as for benefits or to enforce the plan.[38] The Trust does not reference any case law, in Delaware or elsewhere, establishing this delineation.[39] GOT's briefing is similarly bereft of Delaware cases resolving this issue. Instead, GOT relies on federal precedent to illustrate that "lawsuits against ERISA plans for run-of-the-mill state-law contract or tort claims are relatively commonplace."[40] Given the dearth of Delaware—and paucity of federal—cases addressing this point, and the fact that the substantive law here is federal,[41] the Court will consider federal courts' interpretation of the relevant provision of ERISA.[42]

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[38] Reply at 1–3.

[39] The closest the Trust comes to establishing this point is its discussion of *Mennen v. Wilmington Tr. Co.*, 2013 WL 4083852 (Del. Ch. Jul. 25, 2013). But the Trust overstates the holding in that case. Mot. 6–7 (claiming "Delaware has carved out only a single type of trust . . . that can sue or be sued."). The rule in *Mennen* is stated clearly in the case: "the common law rule is that a trust is not a separate legal entity unless specifically defined as such for purposes of a particular statute." *Mennen v. Wilmington Tr. Co.*, 2023 WL 4083852, at *9 (Del. Ch. Jul. 25, 2013). Here, ERISA endows ESOP trusts with the ability to sue and be sued. 29 U.S.C. § 1132(d)(1). Thus, for purposes of this lawsuit, the Court may treat the Trust as a separate legal entity under *Mennen*.

[40] *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 832 (1988). *See also Memorial Hosp. Sys. v. Northbrook Life Ins. Co.*, 904 F.2d 236, 248 (5th Cir. 1990) (acknowledging *Mackey* as allowing suits against ERISA plans for actions unrelated to ERISA).

[41] *See Van de Walle v. Salomon Bros., Inc.*, 1997 WL 633288, at *4 (Del. Ch. Oct. 2, 1997) ("Principles of comity suggest that state courts should defer to the decisions of federal courts when those courts construe federal statutes."); *Dufresne v. Camden-Wyoming Fire Co. Inc.*, 2020 WL 2125797, at *10 n. 98 (Del. Super. May 5, 2020) (acknowledging that "Delaware courts look to pronouncements of federal courts as to federal substantive law.") (citing *Atlas Mut. Ben. Ass'n v. Portscheller*, 46 A.2d 643, 646 (Del. 1945)).

[42] *See City of Wilmington v. Am. Fed'n of State, Cty., and Mun. Emps.*, 2003 WL 1530503, at *4 n. 27, (Del. Ch. Mar. 21, 2003) ("I acknowledge that I am relying on Federal precedent. Delaware Courts, in reviewing labor arbitration matters, routinely look to federal precedent for

The United States Supreme Court has previously discussed the bounds of Section 1132.[43] In a case regarding the potential garnishment of a judgment-debtor's benefits from an ERISA plan, the Court observed that two types of suits may be brought against ERISA plans.[44] "First, ERISA's § [1132] provides that civil enforcement actions may be brought by particular persons against ERISA plans, to secure specified relief, including the recovery of plan benefits."[45] Second are "lawsuits against ERISA plans for run-of-the mill state-law claims such as unpaid rent, failure to pay creditors, or even torts committed by an ERISA plan[,]" which the Supreme Court acknowledged are "relatively commonplace."[46] The Court provided an exemplar case for each category of state-law claims it listed.[47] Although none of the deciding courts in the cases cited in *Mackey* directly addressed the issue

guidance."); *Invictus Special Situations Master I, L.P. v. Invictus Glob. Mgmt., LLC*, 2025 WL 1795946, at *3 (Del. Ch. Jun. 30, 2025) ("The Court noted how Delaware courts take their lead from the Third Circuit on other interpretations of federal statute and that it made sense to do so here [in an ERISA benefits dispute] too.").

[43] *Mackey*, 486 U.S. at 832.

[44] *Id.*

[45] *Id.*

[46] *Id.* at 833.

[47] *Morris v. Local 804, Delivery & Warehouse Emps. Health & Welfare Fund*, 455 N.Y.S.2d 517 (N.Y. Civ. Ct. 1982) (allowing suit against an ERISA plan for unpaid rent); *Luxemburg v. Hotel & Rest. Emps. & Bartenders Int'l Union Pension Fund*, 398 N.Y.S.2d 589 (N.Y. Cty. Ct. 1977) (allowing suit against an ERISA plan for unpaid attorney fees); *Abofreka v. Alston Tobacco Co.*, 341 S.E.2d 622 (S.C. 1986) (allowing suit against an ERISA plan by a doctor for defamation).

of whether the plans were legal entities, each court proceeded as if the plans were proper parties.[48]

The Trust argues that the Supreme Court's discussion of these suits is *dicta* and does not contemplate "whether Section 1132(d)(1) authorizes suits other than ERISA enforcement actions against ESOP trusts."[49] The Court agrees that the *Mackey* Court did not need to reach the issue of interpreting Section 1132(d)(1). Nevertheless, the Court finds that the *Mackey* Court's discussion provides valuable guidance for the proper interpretation of ERISA. Additionally, GOT references a litany of cases where "courts have allowed claims by ESOP trusts to proceed without evaluating the issue."[50] While these cases do not categorically hold that an ESOP trust must be a legal entity subject to suit, they illustrate the presupposition by the federal judiciary that ESOP trusts are subject to state-law civil suits. Aside from attempting to distinguish the cases cited by GOT, the Trust offers no compelling reason to jettison this understanding.[51] Consequently, because the Trust is an

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[48] *See Pressroom Unions-Printers League Income Sec. Fund v. Cont'l Assurance Co.*, 700 F.2d 889, 893 ("if a fund became involved in a contract dispute, and wished to pursue a state law contract claim, § 1132(d)(1) would allow the fund to bring such an action in its own name.")

[49] Reply at 2.

[50] Opp'n at 12 n.4 (citing *Abraham v. Norcal Waste Sys., Inc.*, 265 F.3d 811 (9th Cir. 2001); *Arizona State Carpenters Pension Tr. Fund v. Citibank (Arizona)*, 125 F.3d 715 (9th Cir. 1997); *Sommers Drug Stores Co. Emp. Profit Sharing Tr. v. Corrigan Enters., Inc.*, 793 F.2d 1456 (5th Cir. 1986); *Lawrence v. Potter*, 2018 WL 3625329, at *1 (D. Utah July 30, 2018); and *Irigaray Dairy v. Dairy Emps. Union Loc. No. 17 Christian Lab. Ass'n of the United States of Am. Pension Tr.*, 153 F.Supp. 3d 1217 (E.D. Cal. 2015)).

[51] *See Kennedy Krieger Inst., Inc. v. Brundage Mgmt. Co., Inc.*, 2015 WL 4528885, at *14 (W.D. Tex. 2015) ("Even if the Supreme Court's assertion [that state law claims are common] in *Mackey* was dictum, the [Trust] has cited no authority, and certainly no 'express statutory

ERISA-governed ESOP, it may be sued as a legal entity on the current theories of fraud, North Carolina Securities Act violations, and breach of contract.[52]

### B. GOT has Sufficiently Pled Fraud

GOT's fraud claim is based on "misrepresentations in the Purchase Agreement."[53] To state a claim for fraud, a plaintiff must allege:

> (1) a false representation made by the defendant; (2) the defendant knew or believed the representation was false or was recklessly indifferent to its truth; (3) the defendant intended to induce the plaintiff to act or refrain from acting; (4) the plaintiff acted or refrained from acting in justifiable reliance on the representation; and (5) damage resulted from such reliance.[54]
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> * * *
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> The factual circumstances that must be stated with particularity refer to the time, place, and contents of the false representations; the facts misrepresented; the identity of the person(s) making the misrepresentation; and what that person(s) gained from making the misrepresentation.[55]

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language,' suggesting that actions against an ERISA plan are limited to those brought under ERISA.").

[52] The Court's opinion is limited to the claims at issue in this case. Other claims which "relate to" an employment benefit plan may be inside the realm of exclusive federal jurisdiction. 29 U.S.C. 1144(a) (establishing that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan[.]"). *See Plastic Surgery Ctr., P.A. v. Aetna Life Ins. Co.*, 967 F.3d 218, 225 (3d Cir. 2020) ("Defining the contours of ERISA's express preemption provision is a nettlesome task."). Because the Trust, as an ESOP trust, has the capacity to sue and be sued, the Court does not reach GOT's arguments about whether it meets the definitions of a Delaware statutory trust or a foreign statutory trust.

[53] Compl. at ¶ 79 ("Defendant Warmath, individually and on behalf of the Company and Seller, knowingly and intentionally made misstatements of material fact in the Purchase Agreement, including, but not limited to, misrepresentations regarding Material Customers, Material Supplier, Material Contracts, the Bad Inventory, Financial Statements, and operating practices. Defendant Warmath knew these statements to be false, and he did so for the purpose of concealing the Company's problems and in order to close on the Purchase Agreement.")

[54] *Valley Joist BD Hldgs., LLC v. EBSCO Indus., Inc.*, 269 A.3d 984, 988 (Del. 2021) (citing *Prairie Capital III, L.P. v. Double E Hldg. Corp.*, 132 A.3d 35, 49 (Del. Ch. 2015)).

[55] *Id.* (citing *Browne v. Robb*, 583 A.2d 949, 955 (Del. 1990)).

The Trust argues that GOT has failed to allege that it was in a "'position to know' that the representations were false."[56] It also argues that Warmath's knowledge of the fraud cannot be imputed to the Trust because he was not acting as the Trust's agent.[57] Finally, the Trust argues that even if Warmath was its agent, it cannot be liable for Warmath's actions under the "adverse interest exception."[58]

The Trust correctly points out that GOT does not allege that it was in a "position to know" the representations were false. Notwithstanding, GOT has properly pled that Warmath was acting as the Trust's agent, and that the adverse interest exception does not apply.

**1. GOT has not Pled Direct Knowledge**

In an action for fraud, knowledge may usually be pled generally.[59] GOT argues that, in the contractual fraud context, "[a]n allegation that a contractual representation is knowingly false typically will be deemed well pled."[60] However, "where pleading a claim of fraud has at its core the charge that the defendant knew something, there must, at least, be sufficient well-pled facts from which it can

[56] Mot. at 9 (quoting *Abry Partners V, L.P. v. F&W Acquisitions LLC*, 891 A..2d 1032, 1050 (Del. 2021)).
[57] *Id.* at 9–10.
[58] *Id.* at 13–14.
[59] Ct. Ch. R. 9(b).
[60] Opp'n at 16–17 (quoting *Aveanna Healthcare, LLC v. Epic/Freedom, LLC*, 2021 WL 3235739, at *22 (Del. Super. July 29, 2021)(citation omitted)).

reasonably be inferred that this 'something' was knowable and that the defendant was in a position to know it."[61]

There is no doubt that misrepresentations "about financial statements and EBITDA figures" are "the type of fraud that is knowable."[62] However, the complaint does not allege that the Trust had direct knowledge of the fraud. The Trust held the employees' equity in a representative capacity and was not necessarily involved in routine audits of DoubleRadius. GOT's complaint, instead, rests on imputing the alleged fraud knowledge of the Trust's agent, Warmath, to the Trust itself. Thus, the Court concludes that GOT has not pled a theory of direct knowledge by the Trust.

**2. Warmath's Knowledge is Imputed to the Trust.**

Notwithstanding its failure to allege direct knowledge by the Trust, GOT has properly pled that the Trust had knowledge of the fraud under the theory that Warmath was acting as its agent. "Delaware law states the knowledge of an agent acquired while acting within the scope of his or her authority is imputed to the principal."[63] The allegations in the complaint, in effect, charge Warmath as "chief cook and bottle washer" as it pertains to his involvement with DoubleRadius.[64]

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[61] *Valley Joist*, 269 A.3d at 988 (Del. 2021) (quoting *Trenwick Am. Litig. Tr. V. Ernst & Young, L.L.P.*, 906 A.2d 168, 208 (Del. Ch. 2006)).
[62] Opp'n at 16–17. The Trust does not meaningfully contest this point. *See* Mot. at 7–14; Reply at 6–7.
[63] *Albert v. Alex. Brown Mgmt. Servs., Inc.*, 2005 WL 2130607, at *11 (Del. Ch. August 26, 2005).
[64] *See, e.g.*, Compl. at ¶¶ 9, 20, 59–60, 73, 79, 83, 90 (alleging Warmath made knowingly false fraudulent representations during negotiations and in the Purchase Agreement regarding Material

Therefore, the Court need only decide whether GOT has sufficiently pled that Warmath was the Trust's agent.

An agency relationship can arise in one of two ways. First, a principal may "expressly or implicitly" grant authority to an agent, which is referred to as actual authority.[65] Second, the agent may have apparent authority, which is "authority . . . though not actually granted, [that] the principal knowingly or negligently permits an agent to exercise, or which [the principal] holds him out as possessing."[66] Either type of agency authority, if properly pled,[67] will lead to Warmath's knowledge being attributed to the trust.[68] At this early stage of proceedings, GOT only has to plead "facts that support an inference of agency."[69]

Regarding actual authority, GOT has not directed the Court's attention, through either its complaint or its opposition brief, to any explicit manifestations made by the Trust to Warmath that would support an inference of express actual authority. GOT does, however, allege that "Warmath was the primary negotiator and

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Customers, Material Suppliers, Bad Inventory, DoubleRadius' reasons for inventory pileup, Financial Statements, and operating practices).

[65] *Albert,* 2005 WL 2130607, at *10.

[66] *Id.*

[67] *Otto Candies, LLC v. KPMG, LLP*, 2020 WL 4917596, at *8 (Del. Ch. Aug. 21, 2020) ("Delaware courts have . . . dismissed claims on the grounds of vicarious liability when only conclusory and insufficient allegations were pled.").

[68] *Albert*, 2005 WL 2130607, at *10.

[69] *Eni Hldgs., LLC v. KBR Grp. Hldgs., LLC*, 2013 WL 6186326, at *13 (Del. Ch. Nov. 27, 2013).

decisionmaker for the Trust,"[70] and that "Warmath stood out front during negotiations, acting as the primary point of contact and decisionmaker for both DoubleRadius and the Trust."[71] Additionally, the Trust eventually signed the purchase agreement that Warmath allegedly negotiated.[72] Thus, GOT's allegations support the inference that Warmath had some kind of implied actual authority.

Likewise, GOT has sufficiently pled that Warmath had apparent authority to act as the Trust's agent. As pled by GOT, Warmath conducted the negotiations that cumulated in the purchase agreement.[73] The signing of the Purchase Agreement is a manifestation by the Trust that could be reasonably relied on as evidence of Warmath's agentic authority. Therefore, the Court finds that GOT has sufficiently pled that Warmath was acting as the Trust's agent, and that Warmath's knowledge should be imputed to the Trust.[74]

[70] Opp'n at 23 (citing Compl. at ¶¶ 5, 26).
[71] *Id.* (citing Compl. at ¶ 13).
[72] Compl., Ex. A. The Trust contends that Paredes's signature on its behalf affirmatively disproves an agency relationship with Warmath. Mot. 12, But, at this stage a reasonable inference can also be made that it shows that Warmath was acting as an agent in negotiating the agreement.
[73] Opp'n at 23 (citing Compl. at ¶¶ 5, 26).
[74] Because the Court finds that GOT's has properly pled fraud under a theory of agency, it does not reach the Trust's arguments about the sufficiency of the allegations that Warmath controlled the Trust.

### 3. Adverse Interest Exception

The Trust further argues that, notwithstanding the agency analysis, the adverse interest exception precludes imputing Warmath's knowledge to it.[75] This exception applies only when an agent's actions are "totally adverse" to the principal's interests,[76] such as "siphoning corporate funds or other outright theft."[77] Delaware Courts have emphasized that such a "total abandonment" of the principal's interest is a "highly unusual case,"[78] and that exception must be "applied narrowly" to avoid swallowing the general rule of imputation.[79]

The Trust contends that this exception applies because Warmath acted in his own self-interest by fraudulently inflating the equity sale price.[80] Under Delaware law, this argument fails. Assuming that the allegations in the Complaint are true,

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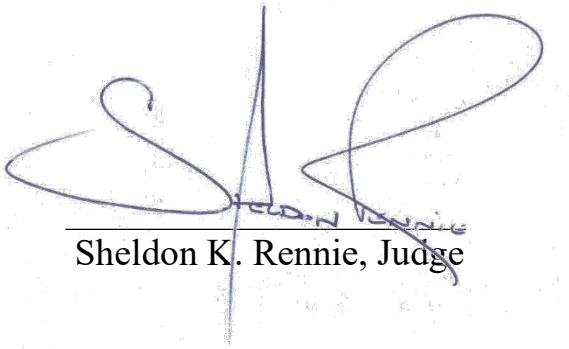
[75] Mot. at 13-14.
[76] *Stewart v. Wilmington Trust SP Servs., Inc.*, 112 A.3d 271, 309 (Del. Ch. 2015).
[77] *Id.* (citing *In re Am. Int'l Grp., Inc., Consol. Derivative Litig.*, 976 A.2d 872, 891 (Del. Ch. 2009), *aff'd sub nom. Teachers' Ret. Sys. Of Louisiana v. Gen. Re Corp.*, 11 A.3d 228 (Del. 2010)). In the employment context, the Supreme Courts has noted that the exception may apply "when the employee has totally abandoned the employer's interests, such as by stealing from it or defrauding it. *Hecksher v. Fairwinds Baptist Church, Inc.*, 115 A.3d 1187, 1205 (Del. 2015).
[78] *Stewart*, 112 A.3d at 309 (citing *In re Am. Int'l Grp., Inc., Consol. Derivative Litig.*, 976 A.2d 872, 891 (Del. Ch. 2009), *aff'd sub nom. Teachers' Ret. Sys. Of Louisiana v. Gen. Re Corp.*, 11 A.3d 228 (Del. 2010)). In the corporate context, the Court of Chancery has previously stated that "the adverse interest exception may not apply even when the "benefit" enjoyed by the corporation is outweighed by the long-term damage that is done when the agent's mischief comes to light." *Id.* at 303 (quoting *In re Am. Int'l Grp., Inc., Consol. Derivative Litig.*, 976 A.2d 872, 892 (Del. Ch. 2009), *aff'd sub nom. Teachers' Ret. Sys. Of Louisiana v. Gen. Re Corp.*, 11 A.3d 228 (Del. 2010)).
[79] *Hecksher*, 115 A.3d at 1204 (quoting *Stewart v. Wilmington Trust SP Servs., Inc.*, 112 A.3d 271, 309 (Del. Ch. 2015)).
[80] Mot. at 13–14.

Warmath's actions were not totally adverse to the Trust. On the contrary, while Warmath undoubtably benefitted from his alleged fraud, so did the Trust and every other beneficiary who received proceeds of the inflated sale.[81] Applying the exception here would extend it far beyond the instances of total abandonment that it was intended to cover. Accordingly, the Court will not apply the adverse interest exception on these facts, and Warmath's knowledge will be imputed to the Trust.

## V. CONCLUSION

For these reasons, the Court **DENIES** the Defendants' Motion to Dismiss.

**IT IS SO ORDERED.**



Sheldon K. Rennie, Judge

[81] The Trust cites *In re HealthSouth Corp. S'holders Litig.*, for the proposition that the adverse interest exception extends to "a transaction in which [the agent] is personally or adversely interested or is engaged in the perpetration of an independent fraudulent transaction, where the knowledge relates to such transaction and it would be to his interest to conceal it." Mot. at 13 (citing 845 A.2d 1096, 1108 n.22 (Del. Ch. 2003)). *HealthSouth* is distinguishable on at least two bases. First, the defendant invoking the exception in *HealthSouth* was attempting to escape liability by imputing his knowledge to his principal. *HealthSouth*, 845 A.2d at 1107–08. The Court was unwilling to allow an agent to use the exception to limit his individual liability. *Id.* Second, more recent case law has emphasized that the agent's interest must be "so inconsistent with that of the [principal's] that it would be inequitable to ascribe responsibility to the [principal]." *Hecksher*, 115 A.3d at 1204. For these reasons, the Court applies the "total adversity" standard endorsed by the Supreme Court of Delaware.